

# **METROPOLITAN AREA PLANNING COMMISSION**

## **MINUTES**

**September 20, 2007**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 20, 2007, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Darrell Downing, Chair; Don Anderson, Vice-Chair; Elizabeth Bishop; David Dennis; Michael Gisick; Bud Hentzen; Bill Johnson; Ronald Marnell; John W. McKay Jr.; M.S. Mitchell; Don Sherman; and G. Nelson Van Fleet. Hoyt Hillman and Debra Miller Stevens were absent. Staff members present were: Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Derrick Slocum, Associate Planner; and Maryann Crockett, Recording Secretary.

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### **1. Approval of the September 6, 2007 MAPC minutes.**

**BISHOP** explained that on page 19 her concern was "access" not parking, and the entrance and exit from the apartment complex -- one way in and one way out -- onto a residential street.

**MOTION:** To approve the minutes subject to staff recommendation, as amended.

**MARNELL** moved, **ANDERSON** seconded the motion, and it carried (12-0).

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### **2. Election of Chairman and Vice Chairman (deferred from September 6, 2007).**

**DOWNING** opened the floor to nominations for Chairman.

**MCKAY** nominated **M.S. MITCHELL** for Chairman. **GISICK** seconded the nomination.

**MOTION:** **DOWNING** moved that **M.S. MITCHELL** be elected Chairman by acclamation. The motion carried (12-0).

**DOWNING** opened the floor to nominations for Vice Chairman.

**MITCHELL** nominated **DON ANDERSON** for Vice Chairman. **HENTZEN** seconded the nomination.

**MOTION:** **DOWNING** moved that **DON ANDERSON** be elected Vice Chairman by acclamation. The motion carried (12-0).

**DOWNING** expressed his appreciation to **DIRECTOR SCHLEGEL** and his staff as well as his fellow Commissioners for the support they gave him during his tenure as Chairman the last year.

**MCKAY** thanked **DOWNING** for his leadership.

**MITCHELL** thanked the Commissioners for their vote of confidence and commented that he hoped there would be as much cooperation this year as there had been last year.

M.S. MITCHELL in the chair

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❖ **Items # 3-1 and 3-2 may be taken in one motion unless there are questions or comments.**

Consideration of Subdivision Committee recommendations from the meeting of September 13, 2007.

**3-1. SUB 2007-78: One-Step Final Plat -- HAGEMAN ESTATES ADDITION**, located on the north side of 39<sup>th</sup> Street South and west of 295<sup>th</sup> Street West.

NOTE: This site is located in the County in an area designated as “rural” by the Wichita-Sedgwick County Comprehensive Plan. It is located in the Garden Plain Area of Influence.

STAFF COMMENTS:

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. Soil Analysis has been completed. A memorandum shall be obtained specifying approval.
- B. In conformance with the Urban Fringe Development Standards, for individual domestic wells that are proposed, a Safe Yield Analysis must be provided to Sedgwick County Code Enforcement to assure the availability of an adequate, safe supply of water that does not impair existing water rights. Easements shall be dedicated for potential future extension of public water. In the alternative to the Safe Yield Analysis, the applicant shall connect to the Sedgwick County Rural Water District No. 4.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. County Engineering has approved the drainage plan. Minor revisions are needed along with revisions to easements.
- E. Both drives must meet County Fire Department requirements for crossing the creek.
- F. County Engineering has approved the access controls. The plat denotes two openings along 39th St. South.
- G. Per Sedgwick County Fire Department, access drives to lots 2 and 3 (Reserve A) shall be in accordance with Service Drive Code of Sedgwick County.
- H. Per Sedgwick County Fire Department, a maintenance agreement for Reserve A will need to be filled with the Registered of Deeds.
- I. Sedgwick County Fire Department has requested that property addresses to be off of 39<sup>th</sup> Street South and posted in accordance with the Service Drive Code of Sedgwick County.
- J. A covenant shall be submitted regarding the reserve platted for private drive purposes, which sets forth ownership and maintenance of the private drive. County Fire Department has advised that the covenant shall specify that Lot 1 and the abutting property to the east shall have no access to Reserve A, unless the Reserve is converted to a public road.

- K. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- L. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- M. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- N. GIS has requested abbreviations for the street types and directionals.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

- W. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to staff recommendation.

**ANDERSON** moved, **MCKAY** seconded the motion, and it carried (12-0).

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**3-2. SUB 2007-77: One-Step Final Plat -WEBB BUSINESS PARK ADDITION**, located North of 37<sup>th</sup> Street North and on the west side of Webb Road.

NOTE: This is a replat of the Toben Addition and the Toben 4<sup>th</sup> Addition in addition to unplatted land.

**STAFF COMMENTS:**

- A. This property has not participated in a sewer main benefit district and in-lieu-of-assessment fees are needed. Public sewers need extended to serve Lot 4, Block 1 and such public lateral needs to extend to the Webb Rd right-of-way. The applicant shall guarantee the extension of public water to serve all the lots.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. City Engineering has approved the applicant's drainage plan. A guarantee is needed and a minimum pad is needed for Lot 1, Block 1.
- D. The plat needs to denote complete access control along Webb Road except for one street opening. The final plat shall reference the dedication of access controls in the plat's text.
- E. The Applicant shall guarantee the paving of the proposed street to the business/industrial street standard.
- F. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- I. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.

- J. "Lots, Blocks, Reserves and a Street" shall be referenced in the platting text.
- K. GIS has requested abbreviations for the street types and directionals.
- L. According to the platting binder, a pipeline easement has been granted over this plat. The applicant shall either obtain a release of the easement or provide proof that the easement has been confined. If confined, any portion of this easement if on this plat shall be shown and the pipeline's name and recording information shown.
- M. The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- N. The platting text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- O. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- P. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- Q. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- R. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- S. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- T. Perimeter closure computations shall be submitted with the final plat tracing.
- U. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- V. A compact disc (CD), which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. If a disc is not provided, please send via e-mail to Cheryl Holloway (E-Mail address: [cholloway@wichita.gov](mailto:cholloway@wichita.gov)). Please include the name of the plat on the disc.

**MOTION:** To approve subject to staff recommendation.

**ANDERSON** moved, **MCKAY** seconded the motion, and it carried (12-0).

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❖ **PUBLIC HEARINGS – VACATION ITEMS**

**4-1. VAC 2007-27: Request to vacate portions of platted floodway reserves (County).**

**APPLICANTS/OWNERS:** C David Royce Charles Royce

**AGENT:** Baughman Company, PA c/o Phil Meyer

**LEGAL DESCRIPTION:** Generally described as a western portion the platted floodway reserves A, B, C, & D that run parallel along the east lot lines of Lots 1, 2, 3, & 4, Block A, Royse Estates, Sedgwick County, Kansas

**LOCATION:** Generally located midway between West Street & Meridian Avenue, midway between 69th & 61st Street North, on the east side of Sheridan Avenue. (BoCC #4)

**REASON FOR REQUEST:** Match the new FEMA maps

**CURRENT ZONING:** The site, all abutting and adjacent properties are zoned “SF-20” Single-family Residential.

The applicant is requesting consideration to vacate portions of the generally described platted floodway reserves, which run parallel to the Little Arkansas River. The request will allow the properties to match up with the new FEMA maps. The applicant has provided the attached letters/documents from FEMA, which removes the described areas of the reserves from the “SFHA” and thus relieves it from the Federal mandatory flood insurance requirement. There are no utilities, water or sewer lines in the platted floodway reserves. There are no platted easements located within the platted floodway reserves. The Royse Estates Addition was recorded with the Register of Deeds December 21, 2006.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from County Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted floodway reserve, as described, with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle and the Derby Reporter, of notice of this vacation proceeding one time August 30, 2007 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted flood-way reserves and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the platted floodway reserves as described in the petition should be approved with conditions:

- (1) Provide Planning Staff with an approved legal description of the vacated portion of the platted floodway easement on a word document via e-mail to be used with the vacation petition and order. The vacated portion of Reserves A, B, C & D will no longer be restricted to "floodway purposes," as stated in the plattor's text, but will be allowed all uses permitted by right or as considered through the Conditional Use process in the "SF-20" zoning district or the appropriate uses per the zoning ordinance if annexed into the City of Valley Center of the City of Wichita.
- (2) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Provide Planning Staff with an approved legal description of the vacated portion of the platted floodway easement on a word document via e-mail to be used with the vacation petition and order. The vacated portion of Reserves A, B, C & D will no longer be restricted to "floodway purposes," as stated in the plattor's text, but will be allowed all uses permitted by right or as considered through the Conditional Use process in the "SF-20" zoning district or the appropriate uses per the zoning ordinance if annexed into the City of Valley Center of the City of Wichita.
- (2) Per MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **ANDERSON** seconded the motion, and it carried (12-0).

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**4-2. VAC 2007-28: Request to vacate platted setbacks and platted public street right-of-way,**

**APPLICANTS/OWNERS:** Traci Pedigo Contrial Development. LLC

**AGENT:** Mark Savoy

**LEGAL DESCRIPTION:** Generally described as a portion of the platted 50-foot setbacks located along the cul-de-sacs/ROW of Hoover Court, located on Lots 8, 9, & 10, a portion of the platted 50-foot setback located along the Hoover Road frontage of Lot 10, the platted 50-foot setback located along the south lot line of Lots 9 & 10, Block 2, and the platted 40-foot half-street ROW, running parallel to the south lot lines of Lots 9 & 10, all in Block 2, all in the Airport Industrial Park Addition, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located midway between Harry Street & Pawnee Avenue, on the west side of Hoover Road (WCC #4)

**REASON FOR REQUEST:** ROW will not be developed

**CURRENT ZONING:** Part of the site is platted half-street street ROW. The rest of the site and all abutting and adjacent properties are zoned "LI" Limited Industrial.

The Airport Industrial park Addition was recorded December 18, 1964. Part of the plat was dedication of 40-feet of half street ROW, May Avenue. As platted, May Avenue was intended to run from Eisenhower Avenue, west to Hoover Road, a distance of 869.84-feet. A subsequent platting of the abutting southern properties into the Mid Continent Addition (recorded February 8, 2001) failed to match May's half street ROW and it was advised that May Avenue be vacated (see attached exhibit, comment "E"). There was a previous vacation on Lot 10's platted 50-foot setback that runs parallel to Hoover Court, V-1118. V-1118 vacated approximately 20-feet of the platted 50-foot setback, where a building encroached into it: it vacated only that portion where the building encroached. The agent has previously applied for and been approved for vacation of portions of platted setbacks in the Airport Industrial Park Addition, via VAC2004-25. VAC2004-25 vacated 15-feet of the subdivision's standard platted 50-foot setback (Lots 4, 5, 9, & 10, Block 1, the Airport Industrial Park Addition), and as such set a pattern that could be followed within in this Subdivision. The UZC has established a minimum front setback for the "LI" zoning district is 20-feet, but the applicant has agreed to vacating only 15-feet of the platted setback that runs parallel to Hoover Court. The UZC has established no minimum interior side yard setback "LI" zoning district, unless there is a 5-foot setback provided. There are no water or sewer in the platted setbacks. Sewer and Westar utilities are in May Avenue, thus a portion of May will be retained as easement. Comments from franchised utilities have not been received and are needed to determine if they have utilities located within the setbacks and May Avenue. Per the 2006 aerial, two of the three lots have been developed

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the portion of the platted half-street street ROW and platted setbacks as described with conditions.

- (1) Vacate that portion of the platted May Avenue half street ROW (as dedicated on the Airport Industrial Park Addition) that runs parallel to south lot lines of Lots 9 & 10, Block 2, the Airport Industrial Park Addition, stopping at the east side of the platted drainage channel ROW. Retain a portion of May as easement, as determined by Water & Sewer and utilities. Provide Planning Staff with a legal description of the easement portion of vacated May, via e-mail on a Word document.
- (2) Vacate the interior 15-feet of the platted 50-foot setback that runs parallel to Hoover Court on Lots 8, 9, 10, Block 2, the Airport Industrial Park Addition. The vacation will not override V-1118, unless the previous legal of the V-1118 was not correct. If the recorded legal of V-1118 was not correct, provide Planning Staff with an accurate legal, via e-mail on a Word document, to be used in the Vacation Order. Vacate the entire platted 50-foot setback that runs parallel to the south lot lines of 9 & 10, Block 2, the Airport Industrial Park Addition.
- (3) Dedicate, by separate instrument, 10-feet of right-of-way along Lot 10's Hoover Road frontage. The dedication will be provided to planning Staff to go with the Vacation order to WCC, for subsequent recording. Vacate the Lot 10's platted 50-foot setback that runs parallel to Hoover Road, the Vacation Order will replace it with a 25-foot setback.



- (4) Retain all platted easements or easements dedicated by separate instrument located within the described vacated ROW and setbacks. Dedicate, by separate instrument, additional easement on Lot 8. The dedication will be provided to planning Staff to go with the Vacation order to WCC, for subsequent recording.
- (5) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicants.
- (6) All improvements shall be according to City Standards and at the applicant's expense. If needed provide a guarantee for any improvements.
- (7) **Per** MAPC Policy Statement #7, all conditions to be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation request are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **ANDERSON** seconded the motion, and it carried (12-0).

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❖ **PUBLIC HEARINGS**

**MOTION:** To take up item #7 (**CUP2007-44**) out of order.

**DOWNING** moved, **ANDERSON** seconded the motion and it carried (12-0).

7. **Case No.: CUP2007-44** – Midian Temple Co., Inc., (Delbert E. Fowler); Poe and Associates (Tim Austin); LAM Properties (Mike Lies) Request DP-307 Creation of new Community Unit Plan to permit single-family, patio, zero lot line, duplex, triplex or quadplex homes on property described as;

Lot 1 and Reserve A, Midian Shrine Hoskinson Addition, Sedgwick County, Kansas. Generally located ¼ mile east of Ridge Road and south of 13th Street North and Ridge Road.

**BACKGROUND:** The application area is 24.46 platted acres located 1/8 mile east of Ridge Road, just south of 13<sup>th</sup> Street North. The site is currently zoned “SF-5” Single-family Residential with a Conditional Use (CON2003-48) that permits “community assembly,” subject to specific development conditions: development of the site is to follow the adopted site plan; a bulletin board sign up to 48 square feet along an arterial street may be permitted; portable signs are prohibited; architectural compatibility with surrounding neighborhood is required; parking lot standards are limited to 14 feet and are required to use cut-off luminaries; trash receptacles and HVAC units are to be screened from ground view and lighting of outdoor playing fields is prohibited. The applicant is requesting the creation of the Tranquility Bay Community Unit Plan DP-307, which would permit a variety of residential uses.

As proposed, Tranquility Bay Community Unit Plan would permit: single-family homes, patio homes, zero lot line homes or two-family, three-family or four-family homes or any combination on a single parcel. Density of the dwelling units would vary depending upon the type of construction. With its current SF-5 zoning the gross maximum number of units that could potentially be built would be 212 at 8.71 dwelling units per acre. However nine acres of the site are encumbered by a utility easement, the western half is on land while the eastern half of the easement is located in the lake that is located along

the sites extreme eastern side. Most of this lake belongs to the Spinnaker Cove Addition and was the subject of much discussion in the earlier Masonic Lodge case cited above. It is more likely that the maximum number of gross single-family units would be considerable less than 134 by the time the 4.5 acres of lake are removed and streets are installed and the utility easement is taken into account. The gross dwelling unit density proposed by the CUP is to be 171 dwellings at seven dwelling units per acre (General Note 4).

The proposed density for the various housing types are as follows (General Note 25): maximum number of single family units would be 98 units, not exceed 4 dwelling units per acre; the maximum number of patio homes and zero lot line homes would be 122, not exceeding 5 dwelling units per acre; the maximum number of duplex units would 146 dwelling units, not exceeding 6 dwelling units per acre; the maximum number of three-family dwelling units would be 159, at 6.5 dwelling units per acre and the maximum number of four-family units would be 171 dwelling units, at 7 dwelling units per acre.

General Note 11 specifies that the minimum lot size for detached single-family units shall be 5,000 square feet, except that minimum lots for zero lot line and patio home units shall be 4,500 square feet while duplex lots shall have a minimum lot size of 6,000 square feet.

Maximum building height is set at 35 feet and two parking spaces are to be provided. Depending upon right-of-way width, Subdivision Regulations may require four off-street spaces, and the CUP should reflect that.

Proposed maximum building height is 35 feet, which is consistent with the SF-5 height standard.

Access to the site is via a single drive 13<sup>th</sup> Street located at the northwest corner of the application area. Buildings located on the site are to be served by a nearly ½ mile long street that loops around on the southern end, with a stub street going to the southern property line. An “emergency access only” stub, going west to North Hazelwood Lane, is located approximately ½ way down the primary street within the subdivision. Subdivision Regulations limit the length of streets that do not have other points of ingress or egress to 800 feet, so if this request is approved, at the time of replatting it is likely the issue of opening up full access to Hazelwood will be discussed. The applicant is also proposing the possibility of gated access to the site (General Note 13). If the roadway is private then a gated entrance will likely not be an issue. Staff is not aware of any gated public streets in the City of Wichita.

Up to one-fourth of the eastern portion of the site is currently located within the floodway (zone AE) while all of the remainder of the southern half of the site is located in a flood fringe zone that in any given year has a .2 percent chance of flooding. A 150-foot wide utility easement is located along the eastern property line, and may well encompass all of the land encumbered by the floodway. The utility easement is developed with overhead electric lines and poles. As shown on the proposed CUP, the rear of the homes would set just west of the 150-foot Westar utility easement located along the property’s eastern boundary. This arrangement places all of the backyards of the dwelling units backing onto the lake within the utility easement.

A 25-foot building setback is shown along 13<sup>th</sup> Street. Proposed front setbacks vary in distance, and are described in the elaborate table contained in General Note 6. In general front setbacks range from 20 to 25 feet; rear setbacks are set at 20 feet. A 20-foot utility and drainage easement is shown along the western property line.

The site’s base zoning of SF-5 permits minimum lot sizes of 5,000 square feet, and permits 8.712 dwelling units per acre. Spinnaker Cove Addition is developed at approximately 1.16 dwelling units per acre while Country Acres Addition is developed at approximately 3.01 dwelling units per acre.

Surrounding property is zoned SF-5, Single-family Residential, MF-29 Multi-family Residential and SF-20 Single-family Residential, and developed with single-family residential (east and west), public park (north) and an apartment complex (north) uses.

**CASE HISTORY:** CON2003-48, discussed above, was approved by the City Council on May 4, 2004, and the Midian Shrine Hoskinson Addition was recorded in October 2004.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-20	Single-family Residential; Sedgwick County Park
SOUTH:	MF-29	Multi-family Residential; apartments
EAST:	SF-5	Single-family Residential; lake, single-family residences
WEST:	SF-5	Single-family Residential: single-family residences

**PUBLIC SERVICES:** 13<sup>th</sup> Street is designated as a five-lane arterial on the 2030 transportation map. At this location, 13<sup>th</sup> Street has 60 feet of ½ street right-of-way, and is developed as a four-lane arterial. Average daily traffic volume on 13<sup>th</sup> Street east of Ridge Road is 12,704. Public sewer and water is available to be extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 *Wichita Functional Land Use Guide* map depicts this site as appropriate for “urban residential” uses. The “urban residential” category includes the full diversity of residential development densities and types typically found in a large urban municipality.

**RECOMMENDATION:** Staff is generally supportive of applications dealing with vacant passed over land that has public services located nearby. Based upon information available prior to the public hearings, planning staff recommends that the request for densities greater than that permitted by the site’s current SF-5 Single-family Residential zoning be denied. However, if the planning commission finds this request to be appropriate, then it is recommended that the approval be subject to replatting within 1-year and to the conditions contained in the proposed CUP, as may be amended, by the MAPC.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding neighborhood is developed with single-family uses zoned SF-5, Single-family Residential (east and west); SF-20 Single-family Residential parkland (north, Sedgwick County Park) and MF-29 Multi-family Residential developed with an apartment complex. The application area is a passed over lot surrounded by developed property. The developed single-family residential properties are developed at approximately 3 dwelling units to the acre. There is a private pond located just east of the application area.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5 Single-family Residential and by zoning permits up to 8 units per acre. Although there are floodplain issues and other development constraints that likely would reduce the density the site could be developed with single-family homes.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the proposed CUP would permit densities that are inappropriate for the site given the sites proximity to developed single-family uses. Staff supports development of single-family uses and possible could consider some duplex uses depending on their location on the site and the number. In staff’s opinion development more intense than single-family is out of character with their closest uses.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 *Wichita Functional Land Use Guide* map depicts this site as appropriate for

“urban residential” uses. The “urban residential” category includes the full diversity of residential development densities and types typically found in a large urban municipality. Given the existing character on the east and west, and the sites current zoning of SF-5, Single-family Residential, inserting more dense residential uses in this location would be inconsistent with the Comprehensive Plan.

5. Length of time the property has been vacant: The property is currently vacant.
6. Impact of the proposed development on community facilities: Public services are available and can be extended to the site.

**DALE MILLER**, Planning staff presented the staff report.

**DENNIS** asked why District Advisory Board V (DAB V) had not heard the case yet.

**MILLER** commented that the case is scheduled to be heard by DAB V on Monday, October 1, and added that the MAPC hearing calendar does not always allow for cases to be heard by the DAB’s prior to coming to the MAPC.

**DENNIS** commented on the limited access to Hazelwood for fire and emergency vehicles and asked how that would be controlled.

**MILLER** stated that there were a number of ways to control access including gates with a lock and key or sometimes a certain horn tone can unlock the gate. He said if this is approved, at platting, staff will argue for opening Hazelwood Street completely because they believe there is too much traffic for the one entrance/exit onto 13<sup>th</sup> Street from the proposed development.

**BISHOP** asked about Traffic Engineering’s comments on the proposal.

**MILLER** said the current plan was being reviewed by the Traffic Engineer, and that he also believed the applicant was trying to make arrangements with the Park Department to exchange some land to the west of the parcel for land on the southern end of the parcel. He said one issue was trying to locate the access point into the proposed development as far away from the bridge as possible.

**TIM AUSTIN, POE & ASSOCIATES, AGENT FOR APPLICANT** said he would like to ask for a two-week deferral and apologized to the members of the public who were present to speak. He said this request was as a result of a meeting he had Tuesday evening with a group from Country Acres. He added that he had also met several times with representatives from Spinnaker Cove. He said the two-week deferral would allow him to revise the CUP to reflect discussions with both groups.

Responding to questions from **DOWNING, AUSTIN** commented that the entrance into the development would be onto a private street with gated access from 13<sup>th</sup> Street. He said they met with the Park Board in August concerning acquiring land to the west in exchange for land further south on the parcel and commented that the Park Board had not made a decision, however, the item was scheduled to be discussed at their October Meeting. He added that he would make a note to make sure the area was large enough for a turnaround.

**AUSTIN** further commented that density could be as high as 8.7 units per acre for a total of 171 units; but the revised estimate will reflect 148 units. He also stated that although there would be a sign on 13<sup>th</sup> Street, there would be no sign at Hazelwood and added that they are not in favor of “full access” along Hazelwood.

**DOWNING** commented that he would like to see something in the plan that states that so there is no confusion about the number of units and no signage on Hazelwood.

**AUSTIN** clarified that town homes and condominiums are simply a financial means of how to develop. He said with town homes people usually own the structure, but with condominiums residents only own the inside of the unit. He said both are allowed uses in "SF-5" Single-Family Residential zoning and that he took that language from another Conditional Use Permit (CUP).

Responding to a question from **HENTZEN** concerning ownership of the lake frontage, **AUSTIN** said the Median Shrine owns the property for the proposed development in addition to about 10-20 feet out into the water.

**BISHOP** commented that she had a draft copy of the minutes of the August 13, 2007 Park Board meeting. She requested that if this matter is deferred, that a representative from the Park Department or Park Board be at that MAPC meeting.

**NORMAN CONLEY, 1322 SAND PLUM LANE** said he was present as both a landowner adjacent to the development and a Shriner. He thanked staff for their assistance and referred to the "12 Golden Rules of Planning" and commented that it stated quite clearly in that document why the application should be denied. He said he would recommend taking staff's recommendation to deny the application and, therefore, shorten the process.

**MCKAY** commented that if the applicant and agent are going to make substantial changes to the proposal, some of the items that the groups object to might not be part of the proposal in two weeks. He said listening to public opinion today might be an exercise in futility, because there may not be a controversy in two weeks.

**DENNIS** commented that a number of citizens took time out of their schedule to attend today's meeting and he felt the Commission should hear them if they would like to speak today.

**MOTION:** Moved to hear public input on the case today.

**GISICK** moved, **BISHOP** seconded the motion and the motion was a tie vote (6-6).

**ANDERSON, DOWNING, HENTZEN, MARNELL, MCKAY and VAN FLEET** – No.

**CHAIRMAN MITCHELL** announced that since the motion failed, the Commission would not hear the public today. He suggested that interested parties provide staff a written record of what they would have presented today.

**LANG** commented that since the notice stated that there would be a public hearing today and the motion failed on a tie vote, he said the Commission should go ahead and hear those individuals that wanted to be heard on this issue today.

**LESS BRUMLEY, 6606 WARREN CIRCLE** said he was concerned that speaking today not preclude him from speaking about the case two weeks from today also. He commented that DAB V had not yet had opportunity for input on the request. He also mentioned the tremendous concerns regarding traffic in the area and cited the bridge to the east and the fact that 13<sup>th</sup> Street was a County road east of the bridge with a speed limit of 50 miles per hour. He said there has also been some discussion about the possibility of installing a crosswalk across 13<sup>th</sup> Street to Sedgwick County Park. He said adding foot traffic, and a gated or non-gated community and bicycle trail, will only add to the present situation and that he does not feel these issues have been properly addressed by the developer. He suggested the Commission follow the staff recommendation and deny the application today. He mentioned the entrance on Hazelwood and that he would like the Wichita Fire Department to make a determination on whether there will be 24/7 access. He concluded by reserving the right to speak again on this item.

**NORMAN CONLEY, 1322 SAND PLUM LANE**, asked the Commission to take the staff recommendation and deny the application in accordance with the "12 Golden Rules of Planning" which discusses such issues as suitability of development for an area. He commented on the proposed layout of 35-foot in height for buildings, which he said will provide a line of houses for ½ mile with very little space between them. He mentioned that the area is located in the flood plain and also mentioned the 150-foot utility line easement and the fact that buildings cannot be located on that land. He said this proposed development would be significantly higher in density than the local neighborhood. He also mentioned safety issues associated with access in and out of the proposed complex onto 13<sup>th</sup> Street and suggested extending the street to the south or using Hazelwood. He concluded by saying that this was a flat piece of property with a very low rise and very little drainage. He commented that if a lot of pavement and houses are constructed in the area, the surface water will increase dramatically. He also mentioned the need for a sanitary sewer system that would involve a lift system. He suggested the Commission accept staff's recommendation and leave the zoning as "SF-5" Single-family Residential.

Responding to a question from **HENTZEN**, **CONLEY** commented that there was one entrance into the County Acres complex, which consisted of 75 single-family homes.

**WHEATON WILEY, 1120 HAZELWOOD** mentioned the Halloween flood that occurred several years ago and how the water almost came into his walk out basement. He said drainage is an issue since 13<sup>th</sup> Street is higher than this area and the sewer can only take so much drainage.

**MARK TINDELL, 1308 SAND PLUM LANE** mentioned traffic issues and the ball diamonds located north on the corner of Ridge and 13<sup>th</sup>. He said during the summer, games are played at the fields Monday through Saturday and that it is very difficult for current County Acres' residents to navigate 13<sup>th</sup> Street. He also commented with all the children at the ball fields and the park, safety was an issue. He said it is almost impossible to make a left hand turn coming out of the ball fields or County Acres. He said the access for the proposed new addition is not 100 feet from the entrance/exit from the ball fields and Country Acres. He suggested that the Commission accept staff's recommendation and deny the plan as it is presented today.

**MOTION:** To deny subject to staff recommendation.

**BISHOP** moved.

**TIM AUSTIN, POE & ASSOCIATES** on rebuttal asked how the Commission could recommend denial when he hasn't even had a chance to present the case. He said everyone at the County Acres meeting the other night agreed to support a two-week deferral and he was asking for that deferral. He asked how the Commission could make a motion if they haven't heard the case, and added that even the client wasn't present at today's meeting. He said he felt it was grossly unfair for citizens from County Acres to ask for a denial when they had supported the two-week deferral. He said he felt other people would have been present at the meeting today but weren't because they thought the item would be deferred.

## **TAPE 1, SIDE 2**

**LANG** commented that the motion could be entered now.

**MOTION:** To deny subject to staff recommendation.

**BISHOP** moved. Motion died due to lack of a second.

**BISHOP** explained that normally she is in favor of greater density in neighborhoods; however, the geography in the area is not going to change and she felt approval of the request would be ill advised.

**MOTION:** To defer the request for two weeks and secure DAB V input.

**GISICK** moved, **DENNIS** seconded the motion, and it carried (12-0).

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5. **Case No.: ZON2007-42** – Builders Inc., (Bradley Smisor) / Bookwood Partners, L.P., Baughman Company PA (Russ Ewy, Agent) Request City zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

The North 20 feet of Lot 1, Block 2, Cedar Lakes Village Second Addition to Wichita, Sedgwick County, Kansas. Generally located south and east of the intersection of Harry Street and Rock Road.

**BACKGROUND:** The applicant requests a zone change from “SF-5” Single-family Residential to “LC” Limited Commercial on a 20 x 105 foot narrow strip of property located along the northern edge of Lot 1, Block 2, Cedar Lakes Second Addition. This strip of land was a part of CUP DP-51, Cedar Lakes Village Community Unit Plan, but CUP2007-00023 administratively removed this piece of land from DP-51. The site is located southeast of the intersection of Rock Road and Harry Street. The applicant intends to continue using the site for parking.

The strip of land is currently paved and has parking stalls to serve the abutting commercial property to the north. The current use of the lot for commercial parking appears to be in violation of the provisions and restrictions of the CUP, which it was a part of, and the Unified Zoning Code (“UZC”) by not having a conditional use for the ancillary commercial parking lot in a SF-5 zone. This zone change from SF-5 to LC will resolve these issues stated above.

North of the site is an LC zoned auto repair shop with used car sales, approved as a conditional use (CON2002-00011) in 2002. East of the site is LC and GO-General Office zoning which contains drainage and an apartment complex. South of the site is SF-5 zoned apartment complex within CUP DP-51, which was approved in 1973 as the Cedar Lakes Community Unit Plan, and west of the site is LC zoning and the site of a shopping center (Cherry Creek Shopping Center CUP DP-98) with retail and restaurant uses.

**CASE HISTORY:** The Cedar Lakes Second Addition was recorded in 1973. The Cedar Lakes Village Community Unit Plan was also created in 1973.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“LC”	Limited Commercial;	Automotive Repair
SOUTH:	“SF-5”	Single-family Residential;	Residential (Apartments)
EAST:	“LC”	Limited Commercial	Drainage
	“GO”	General Office;	Residential (Apartments)
WEST:	“LC”	Limited Commercial;	Shopping Center

**PUBLIC SERVICES:** The site is served by sewer and water and can be accessed from Rock Road.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Local Commercial” use. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and employ site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zoning Code (UZC) would require screening from residential zoned property per the Landscape Ordinance. The landscape requirement responsibility will reside with the commercial property.

**RECOMMENDATION:** This request conforms to the Comprehensive Plan Land Use Guide and Commercial Locational Guidelines. Based upon the information available prior to the public hearings, planning staff recommends that the requested zone change be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding area is characterized by commercial zoning and uses to the north, west and east, near the Rock Road/Harry Street intersections, and residential uses to the south and east of the site.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is zoned "SF-5" Single-family Residential and could be used for residential development, but the size and proximity to a busy arterial and commercial uses may not be desirable for residential use.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Permitted land uses under the requested LC zoning will be more intense than those permitted under the current residential zoning. But, the subject property is currently being used as a parking lot and will continue to be used as such and the subject site is below our minimum standards for a single-family lot. Therefore, removal of restrictions on this site will have no detrimental affect on nearby property.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for "Local Commercial" use. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites be located adjacent to arterials and employ site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Unified Zoning Code (UZC) would require screening from residential zoned property per the Landscape Ordinance. The landscape requirement responsibility will reside with the commercial property.
5. **Impact of the proposed development on community facilities:** The proposed rezone would not generate any more traffic than what is currently occurring with the use of the existing parking lot.

**DERRICK SLOCUM**, Planning staff presented the staff report.

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **SHERMAN** seconded the motion, and it carried (12-0).

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6. **Case No.: CUP2007-43** – TV Reality, LLC c/o Tom Mack, The Baughman Company, PA c/o Russ Ewy Request DP-209 Amendment #1 to alter the boundaries of Parcel 1 and 3, and to permit an auto sales facility within the revised Parcel 3 on property described as;

Lots 1 and 3; Block A; Four H Addition, Wichita, Sedgwick County, Kansas. Generally located north and west of the intersection of Tyler Road and Central Avenue.

**BACKGROUND:** The applicant proposes to amend CUP DP-209 to allow car sales on a proposed reconfiguring of Parcels 1 & 3. At the time of the approval of the CUP (2-19-1993, Z-3085) new and used car sales were listed as a proposed use for both parcels, subject to "BZA approval." Prior to the 1996 adoption of the Unified Zoning Code (UZC) the Board of Zoning Appeals, BZA, had the authority to review and recommend car sales (and other uses not listed on the CUP) as they are listed on this CUP, as a use exception or a special use permit, which required a public hearing. The 1996 adoption of the



UZC passed that authority to the MAPC, thus the public hearing and review of this request as an amendment to the CUP. The General Provision #4 of the CUP permits Administrative Adjustments transferring the floor area and the interior boundaries between Parcels 1, 2 and/or 3. This can also be done with the proposed amendment to the CUP. General Provision #3 list the restrictions on Administrative Adjustments in regards to no increase of the total floor area to the CUP, no increasing the total floor area over 10% on any one parcel, no uses allowed that are not listed on the CUP and no reduction of the perimeter setbacks along Tyler, Central, or adjacent to “AA”, now “SF-5” Single-family Residential zoning. The site is located within Lots 1 & 3, Block A, the Four H Addition, recorded 4-1-1993.

Property abutting the south side of the site is zoned “GC” General Commercial, is under the same CUP, DP-209, and the same plat, the Four H Addition. Most of this property is developed as a Saturn car sales lot (1993), with an accessory repair garage. The rest is a fast food restaurant (1994) and a medical/dental (1990) office. Property west of the site is zoned “SF-5” and is developed as single-family residences (Westlink Village 2<sup>nd</sup> Addition, 6-6-1955), built (random sampling) in the early to late 1950s. Between these single-family residences, running the length of the west side of the site, there is the “SF-5” zoned, 100-foot wide Reserve A, the Four H Addition. Reserve A is restricted to landscaping, open space, screen wall construction and drainage. Property abutting the north side of the site is zoned “TF-3” Duplex Residential and “GO” General Office, is under the same CUP, DP-209, and the same plat, the Four H Addition. The “TF-3” zoned property (ZON2003-58) is developed as duplexes (2005), while the “GO” zoned property (Z-3086) is partially developed (1997) as a medical/dental office. Property east of the site, across Tyler Road is zoned “SF-5” and “LC” with CUP DP-11. The “SF-5” property is developed as a Lutheran Church, while the “LC” property is developed as an auto repair garage (1985), a retail strip (1994) and a fast food restaurant (2006).

**CASE HISTORY:** Z-3085 (2-9-93) rezoned the site and abutting southern property from “LC” Light Commercial & “AA” One-family Residential to “LC” Light Commercial and “C” Commercial, with CUP DP-209 overlaying these properties and abutting northern properties. This established the first car lot in this west-central area of Wichita, away from the established car lots along Kellogg. The site was platted as the Four H Addition, recorded 4-1-93.

**ADJACENT ZONING AND LAND USE:**

NORTH:	“TF-3/CUP”, “GO/CUP”	Duplexes, medical/dental
SOUTH:	“GC/CUP”	Car sales, fast food, medical/dental
EAST:	“SF-5”, “LC/CUP”	Retail strip, fast food, automotive garage, church
WEST:	“SF-5”	Reserve/buffer, single-family residences

**PUBLIC SERVICES:** Tyler Road and Central Avenue are four-lane arterial roads with right and left turn lanes at this location. All utilities are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide” of the Comprehensive Plan identifies this area as appropriate for “local commercial.” This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market area. A large car dealership is identified in the “Guide” as having a regional market area. The subject site’s 1993 CUP established a mid size to large new car sales lot ((+) 7-acres) in an area of Wichita, which previously had no car sales lots. This Saturn car sales lot does have a regional draw, which would seem to be at odds with the “2030 Land Use Guide.” The proposed amendment for a car sales lot is an expansion of this regional market and was anticipated by the language approved in the CUP, for uses on Parcels 1 and 3, the subject site.

Commercial Objective III.B encourages future commercial areas to “minimize detrimental impacts to other adjacent land uses,” with Strategy III.B.1 seeking to channel new strip commercial uses to areas identified on the “Wichita Land Use Guide,” and Strategy III.B.2 seeks to integrate out parcels to planned

centers through shared internal circulation, combined signage, similar landscaping and building materials and combined ingress/egress locations. Commercial Locational Guideline #3 of the Comprehensive Plan recommends that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting and other activity from adversely impacting surrounding residential areas.

**RECOMMENDATION:** The request reflects an anticipated expansion of the existing car sales lot within the CUP. The “2030 Wichita Functional Land Use Guide” either does not reflect the existence of a regional market draw at the northwest corner of Tyler and Central or anticipates that the required public hearing for expansion will limit the existing car sales lot to its current site. This portion of the 1993 CUP is the largest remaining undeveloped land within it. Expansion of an existing car sales within the established CUP can be seen as a more desirable and effective way of permitting car sales in this area than a piecemeal consideration of small, scattered garage or vacant garage sites for Conditional Use permits for car sales. Based upon information available prior to the public hearings, planning staff recommends that the request for Amendment #1 to CUP DP-209, to allow car sales be APPROVED, contingent upon approval of an adjustment to the Parcel lines of Parcels 1 & 3, per General Provision #3 of the CUP and subject to the following conditions:

1. In addition to uses permitted for Parcels 1 & 3, per CUP DP-209, Parcels 1 & 3 shall be limited to the sales of cars and light trucks. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
2. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted without first obtaining “GC” General Commercial zoning and an amendment to the CUP.
3. The applicant shall submit a revised site plan and CUP document for review and approval by the Planning Director, prior to the selling of any cars or light trucks, within six months of approval by the MAPC or the City Council. The site plan will include, but not be limited to, internal circulation that will remain open at all times and confirms the site meets the parking standards for both the approved car sales lot, as well as the CUP’s required maximum building coverage, maximum gross floor area, the maximum number of buildings, setbacks, access points and a maximum building height of 35-feet. The site will be developed according to the revised site plan and CUP document.
4. Clarify that the CUP General Provisions #15 & 16 ensure that a 6-8 foot masonry wall is located between Parcels 1 & 3 and abutting/adjacent residential development and zoning coupled with solid evergreen landscape buffer.
5. The applicant shall install and maintain landscaping in accordance with General Provision #18 a revised landscape plan shall be submitted with the revised site plan, Installation of the landscaping shall begin within the nearest planting season. The plan shall include what plants will be planted and how many and what size the plants are, with the intent of the “Landscape Ordinance”. The landscape plan will also state how the plants will be cared for and that they will be replaced if they die, within the nearest planting season. The landscaping plan will be reviewed and approved by the Planning Director, prior to issuance of any permits/selling of cars and light trucks.
6. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.

7. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons. All other signage will be per the general provisions of the CUP.
8. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface, all vehicles for must be within an enclosed garage.
9. No outdoor amplification system shall be permitted.
10. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area with a solid latching gate.
11. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 15-feet and directed onto the site and away from the residential development north and west of the site.
12. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
13. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
14. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations, including all the provisions of CUP DP-209.
15. If the Zoning Administrator finds that there is a violation of any of the conditions of the Amendment #1 to CUP DP-209, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is predominately "LC" zoned local retail, with CUP overlays. The exception is the of the existing Saturn car sales lot, which has more of a regional market area. Established single-family residences and more recently constructed duplexes are along the northern and western edges of the site.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial with a CUP overlay. The property is suitable for the commercial uses to which it has been restricted. However the site is the last large undeveloped portion of the CUP and abuts a large car sales/dealership site. The CUP anticipated this site as a possible future car sales lot with the language for the uses in Parcels 1 & 3, i.e. car sales shall be subject to "BZA approval."
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Vehicle sales on a site this size when developed with the provision s of the CUP and the suggest additional conditions, will have a minimum of negative effect on the area improve the property, with the application of additional landscaping, screening and the other conditions on the site.

4. Conformance of the requested change to adopted or recognized Plans/Policies: The Commercial Locational Guidelines recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. The 1993 establishment of the Saturn car dealership within this CUP (plus the language in the CUP, which anticipated expansion of car sales within the CUP) provided an opportunity for additional car lots in the area, in particular if they would “cluster” around it, which the proposed amendment to the CUP does. There is no adopted neighborhood plan that would specifically discourage a car sales lot on this site.
5. Impact on Community Facilities: All public facilities are available. Existing road facilities are adequate. Additional access control onto Central Avenue is an improvement to the area.

**BILL LONGNECKER**, Planning staff presented the staff report.

**LONGNECKER** briefly clarified condition #8 in that it should be changed to read, “...all vehicles for repair must be within an enclosed garage” and agreed to the applicant’s agent’s request to change condition #11, in that the height for pole lights should be changed from “15 feet to 20 feet.”

**RUSS EWY, BAUGHMAN COMPANY, INC., AGENT FOR THE APPLICANT** said the applicant was requesting that the 20-foot lighting standards of the existing car lots located immediately to the south of the site, at the northwest corner of Central and Tyler, be applied to the site.

**MILLER** asked if the 20 feet included the pedestal.

**EWY** said he didn’t have an answer for that question; all he knew was just a 20-foot light standard.

**MILLER** said the Commission could either include or exclude the pedestal in the calculation.

**TIM STRAUB, PRESIDENT AND MANAGER EQUISHARE CREDIT UNION, 9100 WEST CENTRAL** said they agreed with the request for the zoning change. He said they opened their office in 1997 and that they had no future plans to turn their site into a car sales lot, but said the credit union would like to be allowed to sell 2-3 repossessed cars in their parking lot. He said they would be coming back to the Commission to ask for permission to do that.

There was brief discussion concerning the 20-foot light standard.

**JOHNSON** commented that the poles are usually 15, 20 or 24 feet in height and the reason the concrete pillar or pedestal is added is so someone won’t back into the light pole.

**MOTION:** To approve subject to staff recommendation including the revisions mentioned, and light standards not exceeding 20 feet including pedestal and light pole.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (12-0).

**MCKAY** asked Longnecker what he meant by a 20-foot tall pole light.

**LONGNECKER** clarified that the staff’s recommendation was for a 20-foot tall pole light, which included the pedestal in that 20-foot total.

**HENTZEN** asked Longnecker if he was allowing for any differences in the elevations in the ground surface of the site, noting that some spots on the ground surface could be lower than the highest spot on the site, thus creating some lights that could be lower than the lights on the higher points.

**LONGNECKER** replied that he was not concerned with high points or low points, but that each individual pole light be a maximum of 20-feet tall, which included pedestal.

**EWY**, after getting off of his cell phone, said the architect and developer wanted to match lighting that is currently at 20-feet plus an additional 3- foot pedestal.

**JOHNSON** suggested meeting the 20-foot standard, with the additional 3-foot pedestal and added as long as the light is shining onto the site and not onto abutting and adjacent properties this should be okay.

**BISHOP** commented on the new technology of providing light without creating glare that is being used near residential developments and said she thought the height recommendation was 15 foot.

**SUBSTITUTE MOTION:** To approve subject to staff recommendation including the revisions mentioned, and light standards not exceeding 23 feet including pedestal.

**MARNELL** moved, **JOHNSON** seconded the motion, and it carried (12-0).

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8. **Case No.: CON2007-32** – Gregory Hiser (Property Owner) / Jeffery M. White (agent, co-applicant) Request County Conditional Use to permit outdoor recreation and entertainment on approximately 12 acres zoned “Rural Residential” on property described as;

The North 400 feet of the East 1320 feet of the Southeast Quarter EXCEPT the North 370 feet of the East 650 feet thereof, Section 17, Township 26, Range 1 West, of the 6th P.M., Sedgwick County, Kansas.

AND

The North 370 feet of the East 650 feet of the Southeast Quarter, Section 17, Township 26, Range 1 West of the 6th P.M., Sedgwick County, Kansas. Generally located Approximately 1/2 mile north of 53rd Street North and west of Tyler Road.

**BACKGROUND:** The application area is approximately 12 unplatted acres located approximately 2,455 feet north of 53<sup>rd</sup> Street North, west of 87<sup>th</sup> Street West (Tyler Road). The applicants are seeking a Conditional Use to permit a Halloween related “outdoor recreation and entertainment” use, named the “Forest of Doom.”

The site plan submitted by the applicant depicts a nearly figure “8” walking path lined with various Halloween themed scenes, such as: a “forest of doom” with scary items hanging in trees; a graveyard with tombstones; a car wreck with an old car; a Cajun shack with an actor and a jailhouse with a hangman scene on the side. The pathway is to be located, at its closest point, 40 feet from the southeast property line, 50 feet from the southwest, 440 feet from the west, 88 feet from the northwest and 139 feet from the northeast. The parking lot is shown setback from the east property line 45 feet, 15 feet from the south and 135 feet from the north property line. Entrance to the park would be at the southeastern quadrant of the property, leading to a 250-foot by 50-foot gravel parking lot. The Unified Zoning Code requires parking lot to be paved with concrete or asphalt. The applicant’s proposed use of gravel on the parking lot will require County Commission approval. (The applicant has been advised to meet with County Fire and County Code regarding items under their jurisdiction.) A ticket booth is to be located just west of the parking lot with a footpath leading to the Halloween scenes. Restroom facilities would be provided with port-a-potties. (County Code Enforcement and Permits would need to permit the portable restrooms. County Code Enforcement and Permits will require a building permit and inspection for the temporary buildings.) The site plan also depicts a 32 square-foot sign, which exceeds the eight square feet permitted by code, however a larger sign can be permitted if specifically approved with the conditional use process.

The applicant proposes the use to be in operation 15 days a year with limited hours of operation. Proposed dates and hours of operation for 2007 are: October 12 and 13, October 21 to 25 - 6:00 p.m. to 11:00 p.m.; October 19 and 20, October 26 and 27, October 28 to 30 - 6:00 p.m. to 12:00 midnight and October 31 - 6:00 p.m. to 1:00 a.m.

The Unified Zoning Code (UZC) permits "Recreation and Entertainment, Outdoor" as a Conditional Use in the "RR" zoning district with the following minimum conditions:

- (1) The property shall be contiguous to an arterial or expressway.
- (2) The lighting standards of Sec.IV-B.4 shall be complied with. No string type of lighting or banners shall be permitted.
- (3) The noise standards of Sec.IV-C.6 shall be complied with.
- (4) All driveways, parking, loading, and vehicle circulation areas shall be paved with concrete or asphalt.
- (5) The Planning Commission may establish operating hours as part of the Conditional Use approval if the property is located in close proximity to residential areas.
- (6) The property shall be properly policed to insure proper maintenance and removal of trash from the premises to eliminate problems to adjacent or public property.

Surrounding properties are used for a mix of land uses. The land abutting the application area on the north, south and west is currently used for agricultural purposes. Property to the west and northwest is used for cropland but has been approved for sand extraction, and annexed by the City of Maize with some level of commitment that public services will be extended as the sandpit redevelops with residential uses. Land further to the north, approximately 400 feet, and northeast, approximately 300 feet, is developed with single-family homes. To the east is Mystic Lakes, a platted single-family development, which on occasion hosts water skiing events. The closest Mystic Lakes home is located within 350 feet of the proposed entrance to the Halloween facility.

**CASE HISTORY:** None

**ADJACENT ZONING AND LAND USE:**

NORTH:	"RR,"	Rural Residential; row crop, single-family
SOUTH:	"RR, "	Rural Residential; row crop
EAST:	"SF-20,"	Single-family Residential; low-density residential
WEST:	"RR, "	Rural Residential; row crop; sand pit

**PUBLIC SERVICES:** 87<sup>th</sup> Street West is an unpaved arterial road with only 20 feet of half-street right-of-way on the western half of 87<sup>th</sup> at this point. This segment of 87<sup>th</sup> Street is designated as a connecting link between 53<sup>rd</sup> Street and 61<sup>st</sup> Street. The county standard is 60 feet. Public sewer and water are not available.

**CONFORMANCE TO PLANS/POLICIES:** The site is located within Maize's 2030 urban growth area. The "Comprehensive Plan's" location guidelines indicate that commercial sites should be located adjacent to arterial streets; should employ site designed features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses and should not put commercial traffic on local residential streets.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The Conditional Use shall permit only a Halloween themed "recreation and entertainment, outdoor" use, and the site shall be developed and operated in substantial

conformance with the approved site plan. A wrecked vehicle is permitted to be located on the site only as part of a Halloween themed outdoor recreation and entertainment use. All props and sets used for the facility must be removed within two-weeks of the last day the facility can legally operate and can be placed on the site no earlier than two-weeks prior to opening day.

2. Advise the BoCC to waive the paving requirement for all driveways, parking, loading, and vehicle circulation areas, to be replaced with materials approved by County Fire/County Engineer. Recommend approval of the requested 32 square-foot sign. The sign is permitted to be up one-month prior to the first date the facility can be opened each year and must be removed within two weeks of the close of the facility.
3. The applicants shall obtain all applicable permits and inspections including, but not limited to County building and health.
4. The parking area is to be graveled. The parking lot is to be at least 60 feet wide.
5. The entrance drive to the site shall meet County standards, as approved by County Fire and Engineering.
6. The applicant shall submit a revised site plan if other agencies require modifications to the submitted plan. Development and maintenance of the site shall be in conformance with the approved site plan.
7. Lighting of outdoor entertainment/recreation areas is limited to low intensity lighting located along the pathways and at the areas that are the focus of each scene (e.g. forest of doom, Cajun shack, car wreck, jailhouse and graveyard). Lighting of parking lots shall also be limited to low intensity lighting sufficient to allow for vehicles to safely circulate within the lot. Spotlights, strobe lights or flashing lights that are visible to offsite residences are not permitted.
8. No outdoor sound amplification systems shall be permitted on the site.
9. Days and hours of operation for 2007 are as follows: a maximum of 15 days a year with dates and hours of operation being: October 12, 13, 21 through 25 - 6:00 p.m. to 11:00 p.m.; October 19, 20, 26, 27, 28 through 30 - 6:00 p.m. to 12:00 midnight and October 31 - 6:00 p.m. to 12:00 midnight. Days of operation for years after 2007 shall be: a maximum of 15 days a year on the following days: the 19<sup>th</sup> (6-11:00 p.m.), 18<sup>th</sup> (6-11:00 p.m.), 12<sup>th</sup> (6-12:00 midnight), 11<sup>th</sup> (6-12:00 midnight), 10<sup>th</sup> (6-11:00 p.m.), 9<sup>th</sup> (6-11:00 p.m.), 8<sup>th</sup> (6-11:00 p.m.), 7<sup>th</sup> (6-11:00 p.m.), 6<sup>th</sup> (6-11:00 p.m.), 5<sup>th</sup> (6-12:00 midnight), 4<sup>th</sup> (6-11:00 p.m.), 3<sup>rd</sup> (6-11:00 p.m.), 2<sup>nd</sup> (6-11:00 p.m.), the last day before Halloween (6-11:00 p.m.) and Halloween 6-12:00 midnight).
10. The parking lot, break room tent, ticket booth and port-a-potties shall be located as shown on the approved site plan. A parking lot attendant, and security shall be present during hours of operation.
11. Dedicate 40 feet of right-of-way prior to October 12, 2007.
12. In lieu of fencing the site, "caution tape" shall be placed around the perimeter of the site.
13. This Conditional Use shall be effective for the next four Halloweens, 2007-2010.

14. If operations have not begun within one year of approval, or if the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area is a mix of agricultural activity interspersed with large-lot and farmstead residential uses. A sand extraction use has been recently approved to the west and northwest of the application area. The sand extraction site has been recently annexed by the City of Maize, with statements that public services will be brought to sandpit property as it redevelops with residential uses. Most of the area is zoned "RR," Rural Residential except for the large-lot residential subdivision located to the east that is zoned "SF-20," Single-family Residential. This area appears to be a transition area that over the next 10 to 20 years will experience greater pressure for urbanization as 53<sup>rd</sup> Street, between I-135 and the City of Maize experiences greater development activity, the sand pit converts to residential uses and public services are extended to the area.
2. The suitability of the subject property for the uses to which it has been restricted: The application area is overgrown with cedar trees and other native vegetation. The property may have been cropland at one time or possibly was a farmstead, but now has been allowed to go fallow. The site's RR zoning permits single-family uses, as well as agricultural activities. It is probably too small to make economic use of the site for traditional farming activities such as row crop or cattle. The site is large enough to be developed with at least one or more single family residences, but it may make better use of the land to wait for more intense development once public services are closer. With that in mind the proposed use could be viewed as a temporary economic use of the property until more significant opportunities present themselves.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The use will introduce an evening and nighttime use into the area that has not been present previously. The code requires that the site be managed to minimize the spillover of light and noise. Traffic will likely increase during the evening hours as well. Mystic Lakes' residents testified at a previous hearing they hold skiing events that include participants not living in the subdivision, so from that standpoint their have been recreational activities not involving local residents occurring in the area prior to this request. The fact that the use is to operate for only 15 days a year, and the proposed conditions of approval and other code requirements such as on-site parking should minimize negative impacts to surrounding property owners.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval would provide the community with another rural recreational use. Denial would presumably be an economic hardship on the applicant.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "2030 Wichita Functional Land Use Guide" of the *Wichita-Sedgwick County Comprehensive Plan* identifies this area of Sedgwick County as within the Maize 2030 Urban Growth Area. This category identifies Maize's urban fringe areas that are presently undeveloped but have the potential to be developed by the year 2030. This is in the area in which City limits expansion and extension of municipal services and infrastructure should be focused during the period from 2005 to 2030.

The UZC provides for "Recreation and Entertainment, Outdoor" as a Conditional Use limited to tennis courts, miniature golf, and similar uses that the Planning Commission has determined will not produce undue noise or attract large numbers of spectators. The UZC goes on to apply supplementary use regulations for the "Recreation and Entertainment, Outdoor" to include:



lighting, noise, driveway/parking surfacing, the option to establish operating hours, maintenance requirements, and a standard stating that street access shall be contiguous to an arterial or expressway. This application does not meet the parking area-paving requirement, waiving this requirement would require the governing body's approval according to the UZC section V-D.6. The current 50-foot half-street ROW does not meet county standards of 60-feet.

6. Impact of the proposed development on community facilities: Traffic will increase on Tyler Road, which is a sand and gravel road. The use does not require publicly supplied sewer and water services. The potential is there for increase demand for public safety services.

**DALE MILLER**, Planning staff presented the staff report.

**MILLER** explained that the items in *Italics* on the staff report were generated from the Maize Planning Commission and staff was not opposed to those requests with the exception of the first sentence of item #4, which refers to the applicant erecting "No Parking" signs, which is not allowed. He said the issue of the parking area being graveled and at least 60 feet wide will need to be presented to the County Commission for approval.

Responding to a question from **MARNELL** concerning the signs, **MILLER** said it was a township road and County Public Works had informed him signs were not allowed.

Responding to a question from **GISICK** concerning the dates and hours of operation, **MILLER** said for 2007 staff backed up the dates for a certain number of days prior to Halloween and for 2008 they did not give the exact dates but clarified the number of days requested. He said the Maize Planning Commission put the two-year limit on the conditional use.

**GISICK** commented that it costs the applicant to come back with the request every year.

**MILLER** responded that time limits are usually made proportional to the investment and that he couldn't say whether that was good or bad, but added that the applicant had agreed to the two-year limit.

**HENTZEN** said he understood that a "conditional use" runs with the land and asked if the Commission has put a time limit on conditional uses in the past.

**MILLER** said yes, conditional uses do run with the land; however, the Commission has dealt with time limitations in the past, such as with sand pit applications.

**GREG HISER, 7605 WEST ONEIL, PROPERTY OWNER**, said he had no problem with staff recommendations on the proposal. He said he would like to ask the Commission to consider amending #13, which addressed the two-year time limit. He admitted that he had brought up the time limit at the Maize Planning Commission meeting, but has since decided that he doesn't want to have to apply every two years; however, he wanted to avoid any delays with County Commission approval of the request.

**DENNIS** asked how long a time period **MR. HISER** wanted to apply for?

**HISER** said he would like the conditional use "open ended" and have it just run with the property. He said he didn't want to have to go through the application process every couple of years.

**MILLER** commented that staff was okay with a longer time frame as long as the applicant and Maize could reach an agreement. He mentioned that the Maize Planning Commission spent a considerable amount of time discussing the issue at the meeting.

**SHERMAN** asked the applicant if they had contacted Maize about amending the two-year limit?

**HISER** responded no, that he had been out of town.

**PARNACOTT** said that was the Maize Planning Commission's recommendation to the MAPC and the MAPC would make a recommendation to the governing body. He said it may delay the process, but since the proposal needs to go to the Board of County Commissioners for approval of the parking lot, he suggested there might be time to take the proposal back to the Maize Planning Commission.

Responding to **MARNELL'S** question regarding density in the area, **MILLER** mentioned that the Lafarge Sand Pit was located to the west and Mystic Lakes was located to the east so it was mostly a rural area.

**JEFF WHITE, PROMOTER AND PARTNER**, mentioned #9 and that only 15 days were allowed in 2007 because they got such a late start. He said they would like to request an additional five days for next year for a total of 20 days. He said they would like to stay open until 11:00 p.m. on weekdays and 12:00 A.M. on weekends. He said he did not understand the time stipulation, since Mystic Lakes holds power boat races and water sky competitions year in and year out and they do not come to the Commission for a use permit.

**MOTION:** To grant the conditional use for 4 years and to eliminate the first sentence of Item #4 of the staff report.

**HENTZEN** moved, **MCKAY** seconded the motion and it carried (12-0).

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The Metropolitan Area Planning Department informally adjourned at 2:55 p.m.

State of Kansas )  
Sedgwick County ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)